

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Revision of the Commission's Rules
to Ensure Compatibility with Enhanced
911 Emergency Calling Systems

CC Docket No. 94-102
RM-8143

To: The Commission

PETITION FOR RECONSIDERATION OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, hereby submits its Petition for Reconsideration of the Commission's Second Memorandum Opinion and Order ("Second MO&O") in the above-captioned proceeding.² The Second MO&O, which purports to address petitions for clarification of existing rules and examine ways to accelerate implementation of Enhanced 911 ("E-911") service, instead amends the existing rules by eliminating a critical precondition for implementation of E-911 service, that a carrier cost recovery mechanism be in place. As a result of this fundamental change in the rules, small and rural carriers and their customers will be severely, and unfairly burdened by E-911 implementation costs.

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 100 rural and small metropolitan markets where approximately 13 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA currently includes rural PCS carriers, as well.

² 64 Fed. Reg. 72951 (Dec. 29, 1999).

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THE FCC SHOULD RECONSIDER AND REVERSE ITS DECISION TO ELIMINATE THE CARRIER COST RECOVERY MECHANISM AS A PRECONDITION TO E-911 SERVICE

I. The Decision Ignores the Impact of Eliminating Carrier Cost Recovery Mechanisms on Small, Rural Carriers

In its Comments on the August 1999 "Implementation Report" of the consortium of public safety organizations and wireless industry associations whose "Consensus Agreement"³ was the basis for the FCC's E-911 rules,⁴ RCA pointed out the importance of a cost recovery mechanism for small, rural carriers, and the disparate impact that a "self-recovery" method, such as "bill and keep" would have:

Under the bill and keep approach, a wireless carrier would recover its actual costs of providing 911 services from its own customers. As actual costs change, the customer charges would change. The Commission should reject the bill and keep approach because it is inequitable to small, rural carriers, non-compensatory and anti-competitive. It is inequitable to smaller carriers and their customers because their typically higher cost of providing service would be spread over a smaller customer base. It is non-compensatory because it is a means of recovering carrier costs, but not PSAP costs.⁵

³ "Public Safety-Wireless Industry Consensus: Wireless Compatibility Issues," CC Docket 94-102, filed by CTIA, NENA, APCO, and NASNA on February 13, 1996 ("Consensus Agreement").

⁴ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) ("Report and Order"); Memorandum Opinion and Order ("Reconsideration Order"), 12 FCC Rcd 22665 (1997).

⁵ Comments of RCA, September 14, 1999 at pp. 5-6 (footnotes omitted).

A recent Washington State study referred to in RCA's comments similarly opposed bill and keep because it would result in inequities between large and small carriers.⁶ The study found that bill and keep was not "economically neutral" because larger carriers could charge lower rates to recoup their costs. If smaller carriers sought to keep rates just as low as their larger counterparts, service quality would suffer.

In its Second MO&O, the Commission acknowledges that as a result of dropping the carrier cost recovery prerequisite some costs "will likely be higher" in rural areas.⁷ However, the Commission seeks to minimize the importance of this recognized fact by suggesting that these higher costs will be balanced out by other costs, which "may actually be lower," such as construction or "other infrastructure needs."⁸ The Commission concludes that while rural carriers' operating costs are generally higher, "it is not clear that such costs should be pooled for recovery in this competitive, deregulated environment." ⁹

⁶ RCA Comments at page 6.

⁷ Second MO&O at para. 57 (emphasis supplied).

⁸ Id. (emphasis supplied). The Commission does not comment on whether the certain higher costs will be greater than the hypothetical lower costs.

⁹ Id. The FCC adds that "rural carriers now have flexibility to employ solutions that may meet their needs at a lower cost." Second MO&O at para. 57, n. 81. This observation begs the question: Lower than what? The Commission fails to quantify the cost comparison, or address the issue of cost in concrete terms, rendering its rationale meaningless. Furthermore, to the extent that "flexibility" addresses the cost concerns of small, rural wireless carriers, "flexibility" relates to Phase II costs only.

Thus, the Commission dismisses as insignificant rural carriers' higher cost of implementing E-911 service, an issue that previously was of great concern. In a similarly dismissive manner, the Commission rejects pooling of carrier costs on the basis that wireless rates are not regulated. It ignores the fact that wireless carriers are heavily regulated in other regards, by virtue of their being required to implement E-911 service, and comply with a vast number of FCC regulations, some of which are extremely costly, e.g., CALEA.

The Commission coyly attempts to deflect the concern that elimination of the carrier cost recovery precondition will have a greater impact on rural carriers, arguing that its decision is not intended to discourage states from implementing carrier cost recovery mechanisms, only that they are not required to do so.¹⁰ This is hardly an "incentive" for a state to implement a state pooling mechanism. To the contrary, it provides "cover" to states that do not wish to institute carrier cost recovery mechanisms as well as an incentive to those that have already enacted such programs to roll them back. Mirroring the FCC's rationale, states can simply reason that leaving cost recovery to individual carriers is a means of speeding E-911 service deployment. Thus, the record, as well as the FCC's own observations, lead to the conclusion that carrier cost recovery mechanisms are important to rural consumers and should be retained.

¹⁰ Second MO&O at para. 57.

II. The FCC's Decision Ignores the Recommendations of the Public Safety - Industry Body that was Charged with Updating the Record on this Issue

The most recent, August 1999 Implementation Report of the Consensus parties identified several factors, not just cost recovery, that present challenges for E911 implementation, including wireless service areas and the number of PSAPs, and PSAP and Carrier Operational impacts. The report also suggested other issues that, if addressed, could speed E-911 implementation: liability protection, antitrust protection, PSAP technical capabilities and PSAP-local exchange carrier relations.¹¹ Yet the Commission focused on cost recovery, and decided to adopt, without further notice, the recommendation of one of the Consensus Parties, APCO, to remove carrier cost recovery as a precondition to implementing E-911 service.¹²

APCO's recommendation, that carriers bill and keep E-911 service costs, was rejected by the other Consensus Parties. Notably, the two other public safety organizations (NENA and NASNA) opposed taking carrier cost recovery out of the equation, and specifically opposed the carrier self-recovery method of bill and keep.

NENA vehemently opposed bill and keep because "this new approach will seriously jeopardize the successful arrangements [in 33 states] that are currently in place to provide cost recovery." NENA also argued that PSAPs had a better chance of success enacting state cost

¹¹ Implementation Report at pp. 6-7.

¹² The Commission rejected requests that it consider amending its rules to eliminate the carrier cost recovery mechanism, in the context of a formal rulemaking. CTIA Addendum to Implementation Report at pp. 1-2; SCC Comments, September 14, 1999 at pp. 2-4.

recovery mechanisms working in tandem with carriers.¹³ NASNA likewise opposed modification of the FCC's cost recovery rules.¹⁴

As the Commission noted in the Second MO&O, "the Implementation Report and carriers argue[d] that the increasing establishment of State-adopted cost recovery mechanisms will result in an increase in Phase I deployment."¹⁵ Yet, despite overwhelming support for carrier funding mechanisms, the Commission chose to adopt the opinion of the lone public safety organization that recommended bill and keep as the carrier cost recovery mechanism.¹⁶

III. The FCC Decision to Drop Carrier Cost Recovery as a Precondition is an "Ends Justify the Means" Approach, Not a Decision Based on the Record

The Commission was disappointed with the pace of wireless E-911 deployment, and stated that it intended to take action to speed up deployment. However, in its zeal to accomplish its objective, the Commission ignored the record as well as its own earlier conclusions about the alternative to a carrier cost recovery mechanism, carriers recovering E-911 service costs directly from their subscribers.

¹³ NENA Addendum to Implementation Report at page 2.

¹⁴ NASNA Addendum to the Implementation Report.

¹⁵ Second MO&O at para. 36.

¹⁶ Also, CTIA noted that the FCC rules require completion of all 911 calls, regardless of whether they can be billed; as a result the bill and keep method will not recover the costs associated with unbillable calls. CTIA Addendum to Implementation Report at page 1, n. 2.

As noted herein, all but one of the Consensus Parties favored self-recovery of carrier costs over the existing process whereby states and localities establish cost recovery mechanisms. The Commission rejected the recommendations of the majority of Consensus parties and carriers that it provide specific guidance to states as a way of stepping up the pace of state approval of cost recovery mechanisms. Instead, it chose the administratively "easier" option of eliminating the carrier cost recovery precondition altogether.¹⁷ In earlier proceedings, the Commission considered and correctly rejected "bill and keep" as a cost recovery method. The basis for the Commission's rejection of a bill and keep cost recovery method has not changed.

The Commission barely conceals its opposition to a carrier cost recovery method. The Second MO&O articulates a position of impartiality with respect to the cost recovery mechanism employed,

[W]e do not intend to disturb the actions of States or localities that already have adopted such mechanisms or to discourage them from deciding that cost recovery or sharing mechanisms that cover carrier costs are an effective way of expediting wireless E-911 for their citizens, especially in rural areas.¹⁸

However, the FCC's preference for carrier self-recovery is undeniable, as when it contends that states are more likely to fund PSAP cost recovery mechanisms with "the carrier cost recovery issue out of the way."¹⁹

¹⁷ Second MO&O at para. 55.

¹⁸ Second MO&O at para. 4.

¹⁹ Id. at para. 57.

Having decided that enactment of state cost recovery mechanisms took too long, the Commission decided simply to eliminate the carrier cost recovery prerequisite to E-911 implementation without regard to the record, which supports its retention. The Commission should reverse its decision and reinstate the cost recovery precondition.

IV. At a Minimum, the Commission Should Provide for an Expedited Waiver from E911 Service for Small, Rural Carriers Where Self-Recovery of E-911 Service Costs Would be Unduly Burdensome to Them and Their Customers

The Commission has used the waiver process in the context of E911 implementation in the past, to address the technological disparities among carriers in the area of handset versus network solutions. Because carriers were at different stages of utilizing one or the other solution, the Commission invited them to seek waivers of Section 20.18(e) of its rules, which requires a certain degree of accuracy in location identification by a certain date. In recognition that not all carriers would have the same technological capabilities by the deadline, it proposed criteria for waiver of the rule.

Similarly, in this instance, the Commission could establish conditions under which a small, rural wireless carrier in a jurisdiction that does not have a mechanism in place for recovery of its E-911 services costs could obtain a waiver in order to defer E-911 implementation. The Commission could require carriers applying for such a waiver to propose an implementation plan, including benchmarks, to ensure that E-911 service is deferred pending resolution of cost recovery issues, and not forestalled indefinitely.

V. Conclusion

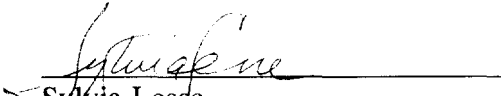
The Commission erroneously focused on carrier cost recovery as the major impediment to E-911 implementation despite evidence that other factors contributed to the slow pace of deployment. On the basis of its false premise, instead of providing more direction to states developing cost recovery mechanisms, the FCC decided to jettison the carrier cost recovery prerequisite for implementing E-911 service altogether. The FCC took this extreme measure even though elimination of the carrier cost recovery prerequisite will have a significant impact in rural areas served by small, wireless carriers.

Because the Commission's action will significantly and unfairly burden rural subscribers served by small wireless operators and based on the aforesaid, RCA respectfully requests that the Commission reconsider and reverse its decision to amend its E-911 service rules. At a minimum, the Commission should establish criteria under which small, rural carriers, for whom self-recovery is a hardship, could apply for a waiver of the E-911 rules.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:


Sylvia Lesse
Marci E. Greenstein

Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 296-8890
January 28, 2000

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Reconsideration of the Rural Cellular Association" was served on this 28th day of January 2000, by hand delivery to the following parties:


Shelley Davis

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, DC 20554

International Transcription Services
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, DC 20554

Commissioner Harold W Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20554

Thomas Sugrue
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington, DC 20554